



State Street Corporation

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December 9, 2019

Chief Counsel's Office  
Attention: Comment Processing  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street, SW  
Suite 3E-218  
Washington, DC 20219

Alfred M. Pollard  
General Counsel  
Federal Housing Finance Agency  
Constitution Center (OGC 8th Floor)  
400 7th Street, SW  
Washington, DC 20219

Ann E. Misback  
Secretary  
Board of Governors of the  
Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

Barry F. Mardock  
Acting Director  
Office of Regulatory Policy  
Farm Credit Administration  
1501 Farm Credit Drive  
McLean, VA 22102-5090

Robert E. Feldman  
Executive Secretary  
Attention: Comments/Legal ESS  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429

Via Electronic Submission

**Re: Margin and Capital Requirements for Covered Swap Entities – Office of the Comptroller of the Currency (OCC) (Docket ID OCC-2019-0023; RIN: 1557-AE69); Board of Governors of the Federal Reserve (Docket No. R-1682; RIN No. 7100-AF62); Federal Deposit Insurance Corporation (FDIC) (RIN: 3064-AF08—Margin Amendments); Farm Credit Administration (RIN: 3052-AD38); Federal Housing Financing Agency (RIN: 2590-AB03)**<sup>1</sup>

Ladies and Gentlemen:

State Street Corporation ("State Street") appreciates the opportunity to provide comments to the Board of Governors of the Federal Reserve System, the Farm Credit Administration, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency and the Office of the Comptroller of the Currency (collectively, the "Regulatory Agencies") on their proposals (the

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<sup>1</sup> Margin and Capital Requirements for Covered Swap Entities, 84 Fed. Reg. 59970 (November 7, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-11-07/pdf/2019-23541.pdf> (the "Proposal").

“Proposal”) to amend margin and capital requirements for covered swap entities. We strongly support the Regulatory Agencies’ efforts to align the compliance schedule for initial margin (“IM”) requirements with the statement issued in July 2019 by the Basel Committee on Banking Supervision (“BCBS”) and the International Organization of Securities Commissions (“IOSCO”) and to clarify IM trading documentation requirements. In addition, we broadly support the efforts to provide relief for legacy swaps related to the transition from the London Inter-bank Offered Rate (“LIBOR”) and other key interest rate benchmarks to alternative reference rates and to align inter-affiliate margin rules with those of global standard setters and the Commodity Futures Trading Commission (“CFTC”). We recommend that the Regulatory Agencies extend the proposed changes to include additional adjustments to the IM trading documentation requirements and extended relief to cover the implementation of fallback contract language referencing benchmarks in asset classes beyond interest rates. Furthermore, we recommend removing physically-settled FX swaps and forwards from the average daily aggregate notional amounts (“AANA”) calculation.

Headquartered in Boston, Massachusetts, State Street specializes in providing institutional investors with investment servicing, investment management, data and analytics, and investment research and trading. With \$32.899 trillion in assets under custody and administration and \$2.953 trillion in assets under management as of September 30, 2019, State Street operates in more than 100 geographic markets globally. State Street is organized as a U.S. bank holding company, with operations conducted through several entities, primarily its wholly owned insured depository institution subsidiary State Street Bank and Trust Company (“SSBT”). SSBT is provisionally registered with the CFTC as a swap dealer and is a major provider of foreign exchange (“FX”) services, operating through multiple branches in U.S. and foreign markets.

### **Additional Compliance Date & Documentation Clarification for IM Requirements**

State Street strongly supports the addition of a sixth compliance phase for IM requirements for counterparties with AANA from \$8 billion to \$50 billion, aligning U.S. regulations with the international framework established by the BCBS and IOSCO. We also support the proposed clarification to expressly state that a covered swap entity is not required to execute IM trading documentation with a counterparty prior to the point in time that it is required to collect or post IM. Without an additional compliance phase, the CFTC projected that 700 entities would come into scope in Phase V, as compared to only 40 entities captured by the first four phases. This includes many entities that, due to the nature of their derivatives exposures, are unlikely to ever trigger the minimum IM of \$50 million. Given the significant time and resources required to negotiate legal documentation and establish operational connectivity with third party custodians, the creation of a new compliance phase and the proposed clarification for IM trading documentation represent important efforts in addressing these implementation challenges.

Still, significant implementation challenges remain related to the monitoring of the \$50 million IM threshold which, in our view, could be mitigated through two adjustments to the existing ruleset. First, the Regulatory Agencies should consider instituting a regulatory “grace period” for the actual exchange of IM once the \$50 million IM threshold is triggered. Without a grace period, firms may have to cease trading with certain counterparties well in advance of the threshold to avoid breaching the limit. The duration of this grace period should ideally be at least six months given the significant time and resources involved to negotiate legal documentation and establish operational connectivity with third party custodians. Second, rather than basing the \$50 million IM exchange threshold on a single daily snapshot, we recommend the use of a quarterly or semi-

annual average. This would alleviate daily monitoring requirements by end users and would provide covered swap entities a less volatile metric by which to measure the \$50 million IM threshold.

### **Recommendations:**

- Adopt the proposed additional compliance date of September 1, 2021 for IM requirements for counterparties with AANA from \$8 billion to \$50 billion
- Adopt the proposed amendment to clarify the point in time at which IM trading documentation must be in place
- Extend proposed changes to include the following:
  - Institute a regulatory grace period of at least six months for the actual exchange of IM once the \$50 million IM threshold is triggered given the significant time and resources involved to negotiate documentation and establish connectivity with custodians
  - Use a quarterly or semi-annual average as the base of the \$50 million IM exchange threshold to provide a less volatile metric and alleviate daily monitoring implementation challenges

### **Interbank Offered Rates (“IBORs”)**

State Street supports the Regulatory Agencies’ efforts to preserve the status of legacy swaps which are amended to replace interest rate provisions based on LIBOR and other key interest rate benchmarks with an alternative reference rate. This relief is critical to ensuring that counterparties are able to reduce their exposure to such benchmarks prior to their cessation. This proposal will minimize market disruptions by allowing swap entities to promptly move forward with their remediation efforts without fear that changes to contract language could trigger the imposition of IM requirements for existing swap contracts.

In addition, State Street encourages the Regulatory Agencies to consider whether to extend the proposed relief to cover the implementation of fallback contract language in all derivatives referencing benchmarks across different asset classes. This is particularly important in light of existing legislation in place in Europe (i.e., the EU Benchmarks Regulation), which requires market participants to amend contracts governing financial instruments referencing benchmarks in all five asset classes (rates, FX, equities, commodities and credit) in order to ensure the availability of an alternative rate in the event a benchmark materially changes or ceases to be provided.

The International Swaps and Derivatives Association has published a protocol to enable market participants to incorporate fallbacks into their contractual documentation in an effort to facilitate compliance with the requirements of the EU Benchmarks Regulation. European market participants are in the process of amending their contracts with trading counterparties, including U.S. counterparties with whom they trade. Extending the proposed relief to all benchmarks would enhance this effort by clarifying that the use of fallbacks in financial instruments referencing benchmarks would not inadvertently subject these transactions to the uncleared margin rules.

**Recommendations:**

- Adopt the proposed relief to preserve the status of legacy swaps as counterparties amend contract language to reduce their exposure to LIBOR and other key interest rate benchmarks prior to their cessation
- Extend the proposed relief to cover the implementation of fallback contract language referencing benchmarks in all five asset classes (rates, FX, equities, commodities and credit)

**Initial margin requirements for non-cleared swaps between affiliates**

State Street supports the Regulatory Agencies' proposal to exempt inter-affiliate swaps from the IM requirements of the swap margin rules. We appreciate the discussion in the Proposal regarding the use of inter-affiliate swaps by covered swap entities for internal risk management purposes. Furthermore, we agree that the existing IM requirements in the swap margin rules may have adversely impacted existing asset liability management structures and therefore resulted in competitive disadvantages for U.S. firms.

**Recommendation:**

- Adopt the proposed changes to exempt inter-affiliate swaps from the IM requirements of the swap margin rules

**Additional topic for consideration**

Lastly, we urge the Regulatory Agencies to remove physically-settled FX swaps and forwards from the AANA calculation. This reflects a number of considerations. First, physically-settled FX swaps and forwards do not independently require IM exchange and will not result in a significant increase in the amount of posted IM. Second, as short-dated and highly liquid transactions, physically-settled FX swaps and forwards present limited long-term or systemic risks. Third, the proposed framework would require firms to spend significant resources and time to monitor activity and negotiate agreements with counterparties that will likely not require the actual exchange of IM. In summary, the current construct of including physically-settled FX swaps and forwards in the AANA calculation produces suboptimal regulatory outcomes.

**Recommendation:**

- Remove physically-settled FX swaps and forwards from the AANA calculation

**Conclusion**

State Street appreciates your consideration of this letter and the recommendations we propose. To summarize, we broadly support the Regulatory Agencies' efforts to add a sixth compliance phase for IM requirements for counterparties with AANA from \$8 to \$50 billion, to clarify IM trading documentation requirements, to provide regulatory relief to counterparties amending their legacy swaps referring LIBOR and other key interest rate benchmarks to alternative reference rates, and to exempt inter-affiliate swaps from IM requirements. The additional recommendations we propose are intended to support these efforts.

STATE STREET.

Please feel free to contact me at [jjbarry@statestreet.com](mailto:jjbarry@statestreet.com) should you wish to discuss State Street's submission in further detail.

Sincerely,

A handwritten signature in black ink, appearing to read "JJ Barry", with a stylized, flowing script.

Joseph J. Barry